IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 4911 OF 1992

Miss. Edna J. Coelho
Occupation-service,
residing at 36 Ghorpadi Bazar,
Pune - 411 001. ... Petitioner
Orig. Deft.Tenant

Vs.

Shri Shivdayal Biharilal Gupta
Occupation- business.
residing at 21 Ghorpadi Bazar,
Pune - 1. ..Respondent
Orig.Plaintiff-
landlord.

Mr. R. M. Pethe i/b Mr. R.G. Ketkar for the petitioner.

None for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 7TH JULY, 2005.

ORAL JUDGMENT

. The petitioner-tenant has invoked Article 227 of the Constitution of India and prayed to set aside, the concurrent finding of facts, arrived at by the Courts below, whereby the suit for recovery of possession of the suit premises in question, of respondent-landlord has been allowed.

2. Heard Mr.Pethe, the learned Counsel, appearing

for the petitioner. None for the respondent. Undisputed position which is borne out from the record can be crystalised as under;

. The bonafide need of the respondent-landlord for the premises in question have been duly proved, apart from the material and the evidence led by the parties.The said concurrent finding, has the foundation of landlord’s 21 family members. The need of the landlord in such circumstances, cannot be overlooked. The learned Counsel contended, that in view of the fact, that pending the suit itself, by the judgment, dated 20th June, 1989, in Writ Petition No. 2767/1987, the respondent-landlord got the possession of the premises. Therefore, the Court ought to have taken into consideration all these events. The Appellate Court has not considered the fact that after getting the possession of the premises, the landlord has let out the said premises for the non residential purpose. Having once obtained the possession of the premises, on the foundation, the landlord ought not to have let out the said premises for the non-residential purpose. It is difficult to accept these contentions, as the need and desire of the landlord cannot be directed or restricted

by the tenants. Being the owner of the premises, they are entitled to use the said premises for the purpose of their personal use and occupation. Even otherwise in the present facts and circumstances of the case, there is a ample material on the record, apart form the evidence of the parties, that there are 21 family members. The examination-in-chief of Shri Shivdayal P.W. 1, in his evidence in para 2 referred as under;

> "I reside in House NO.21, Ghorpadi bazar, Pune-1. In that house, I possess half share and my brothers Mohanlal possesses half share. My brother Mohanlal died about in the year 1986 or 1987. After his death his L.Rs. are brought on record. Exh.36 is certified copy of property extract pertaining to H.No. 21, consists of two floors. Ground floor is used for commercial purpose. There is business of my sons on the ground floor. Names of my sons are Gopal and Laxman on the first floor, there are three rooms. I have three sons and a daughter. My daughter is a widow and resides with me. She has two children. Her eldest child is a daughter aged about 15 years and second is a son aged about 8/9 years. My first son Gopal has four sons. My sons are separate and living with me. They all reside in 21, Ghorpadi Bazar, out of three rooms in 21, Ghorpade Bazar, on first floor, one room is used as a common kitchen for all. In one room my elder son Gopal resides. That room is of the size of 9' X 12". Gopal has three daughters and a son aged about 12,9,8 and 11/2 years. Gopal has a wife. In third room, my second son Omprakash resides. Omprakash has a wife and two children ,aged about 2 years and one year. Third room is also of the size of 9' X 12'. I again say H.No. 21 consists of ground floor, first floor and second floor. On second floor, there are two rooms, one is large and

> another is small. Large room is of the size of 18′ X 9′ and small room is of the size of 9′ X 12′. I reside in small room along with my daughter. Larger room is in occupation of son of my brother by name Bharat. My third son Laxminarayan resides in tower on terrace, Laxminarayan has a wife and three children, aged about 12,9, and 6 years. On tower he has laid tin sheets and used for sleeping purpose at night. My grand children are taking education. Premises in our occupation are quite in sufficient. therefore, the suit premises are reasonably and bonafide required by me. there will be greater hardship to me in case suit is not decreed. The defendant alone is residing in the suit premises.She is in Government service. There will be no hardship to her in case suit is decreed".

Even in the cross-examination nothing contrary has been extracted by the petitioner-tenant. Therefore, bonafide need, as claimed is supported by the material evidence on the record and as it is proved and both the Courts come to the same conclusion, I see there is no reason to interfere with the said findings.

3. Taking into account the reasoning given by the Courts below and the evidence on the record, I am also of the view that the conclusion arrived at by the Courts below is plausible, reasonable and there is no perversity. The view is within the frame work of law. No case for interference is made out. There are no

other grounds which can be said to be sufficient to disturb the concurrent findings.

4. For the above reasons the petition is dismissed. Rule discharged. Interim order stand vacated. No order as to cost.

[ANOOP V. MOHTA, J.]